that will affect him legally — that is by curtailing his legal rights. That will not be the case unless an order may be made in the action which will operate on something in which he is legally interested."

The appellant and respondent company have both strenuously opposed this appplication. I shall deal with each case separately. The appellant, in my judgment, ought to be held to her contract to leave the conduct of the litigation in the hands of the applicant: he who pays the piper should be entitled to call the tune. Any other course would be unconscionable by reason of her own conduct. On the faith of her promise in writing the applicant had expended what must have been a very considerable sum of money. Is he to be left without any remedy by reason of her going over, as it were, to the enemy? To such conduct, I would respectfully apply the new estoppel thus stated by Denning L.J. (as he then was) in *Lyle Meller* v. *Lewis*:—[9]

"It may not be such as to give rise to an estoppel at common law, strictly so called, for that was confined to representations of existing fact: but we have got far beyond the old common law estoppel now. We have reached a new estoppel which affects legal relations.

This new estoppel applies to representations as to the future. Take the kind of assurance which was held binding in *Central London Property Trust* v. *High Trees House Ltd.*[10] and in *Tool Metal Manufacturing Co. Ltd.* v. *Tungsten Elecric Co. Ltd.*[11] in the Court of Appeal (first action), and in the House of Lords (second action). In each of those cases a creditor during the war gave a promise or assurance to the other party that he would for the time being forgo sums which were thereafter to become due to him. In the *High Trees* case it was rent. In the *Tungsten* case it was sums payable by way of compensation. The assurance was not a contract binding in law, but it was an assurance as to the future, it was intended to be acted upon, it was acted upon, and it was held binding on the party who gave it. . . . This new estoppel also applies to representations about legal relations. Take the kind of assertion or assurance which was held binding in *Robertson* v. *Minister of Pensions*,[12] and in the decision of the Privy Council in *Harnham Singh* v. *Jamal Pirbhai* [13] to which Lord Hailsham drew our attention this morning. In each of those cases one party had made to the other a clear and explicit assertion of the legal relationship existing between them. In the *Robertson* case it was a statement by the Crown to an Army officer: 'Your disability has been accepted as attributable to military service.' In the *Harnham* case it was an unequivocal statement by a tenant that he 'will remain in occupation as a statutory tenant'. The statement was not in either case a contract, and not regarded as such, but it was an assurance as to the legal position — as to the legal consequences of the facts known to both — which was intended to be acted upon, it was acted upon, and it was held to be binding."

In my judgment the appellant should not be permitted to leave the applicant in the lurch. As to the company, unless the appellant's objections are sustained I see no point, at this stage, to inquire into the merits of the case or of the appeal itself, as suggested in the affidavit of Lee Wan Seng affirmed on March 29, 1967. The sole and manifest object of the respondent company in paying $10,000 to the appellant was to take no risk of the judgment of Ali J. being reversed on appeal. Once I have come to the conclusion that, in fairness and justice, the applicant ought to be given leave to intervene, I do not think the respondent company's objections raise any further obstacle to the making of the order applied for.

I would accordingly allow the application, give leave to substitute the applicant's name for that of the appellant, add the second respondents as the second appellants (to which they have consented) and in their place substitute the appellant to be jointly respondent with the company; the costs of this application, in the exercise of my discretion, I order to be costs in the appeal.

Application allowed.

Solicitors: *Braddell & Ramani; Shearn, Delamore & Co.; Arulanandom & Co.; Dharmananda & Co.*

GURBACHAN SINGH v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) August 7, 1967]

[Penang — Federal Court Criminal Appeal No. X. 2 of 1966]

Criminal Procedure — Refusal by High Court under s. 66 Courts of Judicature Act 1964, to reserve question of law for decision of Federal Court — Finality of such decision — No right of appeal against refusal provided in the Constitution.

After having been convicted by the Sessions Court Alor Star and sentenced, the present applicant appealed to the High Court. His appeal was dismissed. The applicant then applied to the High Court under section 66 of the Courts of Judicature Act that a question of law of public interest concerning his appeal be reserved for decision of the Federal Court. The application was refused. Against that refusal the applicant appealed to the Federal Court. The preliminary question the Federal Court had to consider was whether an appeal lies against that refusal or whether any appeal lies at all.

Held: the decision of the High Court in exercise of its discretion under section 66 of the Courts of Judicature Act must be regarded as final and the Federal Court has no jurisdiction to review it.

FEDERAL COURT.

V. K. Palasuntharam (*Jag-Jit Singh* and *Rasiah Rajasingam* with him) for the appellant.

Syed Othman bin Ali (Parliamentary Draftsman) for the respondent.

The judgment of the Federal Court was delivered by:

Azmi C.J. (Malaya): The applicant was convicted by the Sessions Court at Alor Star of an offence under the Prevention of Corruption Act and was sentenced to a term of imprisonment and a fine. He appealed to the High Court at Alor Star against this judgment.

At the hearing of the appeal the High Court allowed leave to produce further evidence. The High Court, however, finally dismissed the applicant's appeal*.

The applicant subsequently applied to the High Court under section 66 of the Courts of Judicature Act that it reserve for the decision of this court a question of law which the applicant submitted was of public interest.

This application was heard on the 4th August 1966 but the application was refused.

The applicant now appeals against that refusal and the preliminary question this court has to decide is whether there is an appeal against this refusal with or without leave of this court or whether there is any further appeal at all.

Counsel for the applicant submitted that there is a right of appeal to this court against the order of the learned judge refusing to do so for the following reasons:—

(1) that under the Federal Constitution there is unlimited appeal to this court.

(2) this court can admit an appeal under such terms as it may appear proper so that substantial justice may be done under section 56 of the Courts of Judicature Act of 1964.

(3) when the judge of the High Court exercises his power under section 66, he does so as a single judge of this court in which circumstances this court may vary or alter such an order.

We were referred to the following articles of the Constitution:—

"Article 121(1): Subject to clause (2) the judicial power of the Federation shall be vested in two High Courts of co-ordinate jurisdiction and status, namely —

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry in Kuala Lumpur; and

(b) one in the Borneo States, which shall be known as the High Court in Borneo and shall have its principal registry at such place in the Borneo States . . .

and such inferior courts as may be provided by federal law.

(2) The following jurisdiction shall be vested in a court which shall be known as the Federal Court and shall have its principal registry in Kuala Lumpur, that is to say, —

(a) exclusive jurisdiction to determine appeals from decisions of a High Court or a judge thereof . . ."

Article 128(3) further provides that:—

"The jurisdiction of the Federal Court to determine appeals from a High Court of a judge thereof shall be such as may be provided by federal law."

Provisions in reference to appeal in criminal matters are to be found in sections 50 to 66 of the Courts of Judicature Act of 1964.

Section 50(1) gives the Federal Court jurisdiction to hear and determine an appeal by a person convicted by any High Court in exercise of its original jurisdiction. Sub-section (4) of this section further provides:—

"The Court shall also have jurisdiction to hear and determine matters brought before it in accordance with the provisions of section 64, 65 or 66 of this Act."

Section 64 gives discretion to the Public Prosecutor in the case of an acquittal of a person by the High Court, in exercise of its original criminal jurisdiction, to issue a certificate that the determination of such trial involved a question of law which it is desirable to have determined by the Federal Court. Whereupon the Federal Court shall review such case.

Under section 65(1) the judge of the High Court may in its discretion reserve for the decision of the Federal Court any question of law which has arisen in the course of the trial, where in exercise of its original criminal jurisdiction convicted a person.

Section 66(1) reads as follows:—

"When an appeal from a decision of a lower court in a criminal matter has been determined by a High Court the judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Federal Court any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal."

Reading clause (3) of article 128 of the Constitution, together with sub-section (4) of section 50 of the Courts of Judicature Act of 1964, it is our view that the jurisdiction of this court in reference to appeals in criminal matters is circumscribed within those sections of the Courts of Judicature Act mentioned in sub-section (4) of section 50 of the Act. Therefore, in reference to section 66, this court has jurisdiction to hear and determine an appeal from the decision of a lower court in a criminal matter only when the matter is sent up to this court by an order of the High Court. The right to appeal under the Constitution is a creature of statute and unless there is a special provision there would be no inherent right. Therefore, in our view, the first ground submitted by counsel must fail.

As to the second point, section 56 of the Courts of Judicature Act, in our view is confined to a case where a person wishing to appeal is debarred from doing so by reason of his failure to observe certain formalities or requirements of the Act. It gives the Federal Court wide discretion but we do not think that the provisions of this section are so wide as to give this court the power to hear an appeal against a refusal of the High Court under section 66.

Now as to his third ground it is said that the judge of the High Court is in law a single

* [1966] 2 M.L.J. 125. See also [1967] 1 M.L.J. 74.

judge of this court and therefore, this court is in a position to review the judgment of the High Court. We are afraid we are unable to understand this submission and we do not think there is any substance in it.

That submission does not seem consistent with the provision of article 122(2) and article 125(10). Clause (2) of article 122 requires nomination in each particular case by the Lord President before a judge of the High Court may sit as a judge of the Federal Court. Clause (10) of article 125 specially provides that a judge of the High Court, once he has been appointed to be a judge of the Federal Court, shall cease to be a judge of the High Court. It would appear that a Chief Justice is the only person who can sit both on the High Court and the Federal Court.

It was also urged before us that the word "may" in section 66 of the Judicature Act should be read to mean "shall", with the result that the judge's jurisdiction to reserve a matter for the decision of this court ceases to be a discretionary one. In this sub-section two different words connecting different meanings are intentionally used and in our view there cannot be any doubt that these words shall have their usual meaning. In other words, it is the clear intention of this sub-section that the jurisdiction of the High Court shall be a discretionary one where the party making the application is other than the Public Prosecutor. On the other hand, it is equally clear to us that it is the intention of this sub-section that the High Court would have no discretion but to admit an application where it is made by the Public Prosecutor himself.

In the circumstances, it is therefore our view that the decision of the High Court in exercise of its discretion under section 66 of the Judicature Act must be regarded as final and that this court has no jurisdiction to review it.

The appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *Jag-Jit Singh & Co.*

TAN TUAN CHIN v. CHEN WEI YIN & ANOR.

[F.C. (Azmi C.J. (Malaya), Pike C.J. (Borneo) and Yong J.) August 7, 1967]

[Penang — Federal Court Civil Appeal No. X. 67 of 1966]

Landlord and Tenant — Tenancy of vacant land converted into premises by attap hut — Later demolished and new building erected — New lease — Time of erection — Control of rent excluded.

The appellant was a tenant of a piece of vacant land in 1946 paying a ground rent of $6 per month. He subsequently erected a temporary attap house. Then sometime in August 1948 the appellant with another took a lease of the same land for 7 years with a right to erect a building thereon. The building No. 93 Campbell Street was completed in 1949. On the expiration of the said lease the appellant took a further lease for 4 years with a provision that at the expiry of the further lease in 1960 he would be a monthly tenant of the premises. The further lease expired and the respondent terminated the monthly tenancy on October 31, 1964. The appellant refused to give vacant possession and the landlord obtained an order for possession from the Sessions Court. The appellant appealed to the High Court which dismissed his appeal. On appeal to the Federal Court,

Held: (1) it was not disputed that No. 93 Campbell Street was completed after January 31, 1948 and therefore not protected under the Control of Rent Ordinance;

(2) the appellant surrendered his old monthly tenancy of the land when he accepted the lease for seven years.

Per Yong J.: "Land by itself does not come within the definition of 'premises' as defined in the Control of Rent Ordinance, 1956. It becomes 'premises' only if it is occupied with a building or buildings there. A building is not a building within the Ordinance if it was completed after the 31st day of January 1948. If land, when let was vacant land and no building or buildings have since such letting, been erected thereon, such land does not come within the definition of 'premises'."

Cases referred to:—

(1) *Toh Ching Kwan* v. *Ng Ah Kak* [1955] M.L.J. 151.

(2) *Soong Co. Ltd. & Anor.* v. *Teoh Cheng Sim* [1956] M.L.J. 16.

(3) *Evelyn Saw Hee Li* v. *Gan Tit Sun* [1959] M.L.J. 146.

(4) *Mayor Singh* v. *Lau Geok Swee* [1960] M.L.J. 285.

(5) *Veerapillai* v. *Ooi Ewee Hoe* [1961] M.L.J. 260.

(6) *Nair* v. *Chidambaram* [1961] M.L.J. 264.

(7) *Syed Ahmad Al-Junied & Ors.* v. *Reshty* [1966] 2 M.L.J. 124.

(8) *Reshty* v. *Syed Ahmad Al-Junied & Ors.* [1966] 2 M.L.J. 121.

(9) *In re Savile Settle Estates* [1931] 2 Ch. D. 210.

(10) *Baker* v. *Merckel* [1960] 1 All E.R. 668 C.A.

(11) *Foquet* v. *Moor* (1852), 7 Exch. 870.

(12) *Chanan Singh* v. *Thiyagaletchumi* [1965] 2 M.L.J. 158.

FEDERAL COURT.

Jag-Jit Singh for the appellant.

A. Jayadeva for the respondent.

Cur. Adv. Vult.

Yong J.: This appeal arose out of the judgment of the Penang High Court which dismissed the appellant's appeal against the decision of the President of the Sessions Court, who had ordered him to deliver up to the respondents (landlords) vacant possession of that portion of the premises No. 93, Campbell Street, Penang, occupied by him and also to pay to them *mesne profits* at $45 per month from 1st October 1964 until delivery of possession.

Before us the appellant's counsel limited his appeal, as he had similarly done in the High